

Service Date: May 8, 1992

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF The Application)	UTILITY DIVISION
by the MONTANA POWER COMPANY for)	
Authority to Increase Rates for)	DOCKET NO. 90.6.39
Natural Gas and Electric Service.)	ORDER NO. 5484w

ORDER ON MOTION FOR RECONSIDERATION

BACKGROUND

On March 26, 1992 the Montana Public Service Commission (Commission) issued Order No. 5484s in this Docket, Order on Motions for Reconsideration of reconciliation, moderation and rate design. In addition to disposing of motions for reconsideration, Order No. 5484s granted the Montana Consumer Counsel's (MCC) motion to stay implementation of Order Nos. 5484n, 5484r and 5484s until November 1, 1992. The Commission denied the alternative request of the District XI Human Resource Council (HRC) to lift the stay and impose a refund mechanism to adjust revenues to approximate the class revenues that would have been collected pursuant to Order No. 5484n. See Order No. 5484s, paragraphs 3-8.

On April 6, 1992 HRC filed a motion to reconsider paragraphs 6, 7 and 8 of Order No. 5484s, along with a request to have until April 12, 1992 to file a brief in support of the motion. The Commission granted HRC to April 12 to file a brief and granted interested parties to April 17, 1992 to file response briefs. Response briefs were duly filed by the Montana Power Company (MPC) and the Large Customer Group

(LCG); in addition, HRC filed a reply brief. On April 30, 1992 the Commission voted to reconsider its decision on MCC's motion to stay and HRC's alternative request, a decision initially made in Order No. 5484s and not previously reconsidered. Following reconsideration the Commission voted to reaffirm its initial decision.

DISCUSSION

The Commission reaffirms its initial decision on both legal and policy grounds. At Order No. 5484s, paragraph 8, the Commission wrote, The Commission denies HRC's request to immediately lift the stay and to impose a refund mechanism. The rates implemented by MPC pursuant to Commission Order No. 5484o are not interim rates. Ordering MPC to disgorge a part of the revenue collected by those rates, through some forward adjustment mechanism, would constitute retroactive ratemaking, which is prohibited by Montana law.

HRC argues on reconsideration that 1) it did not seek a refund mechanism, 2) it did not seek to force MPC to disgorge part of the revenue it collected through Order No. 5484o rates, and therefore 3) its proposal would not constitute prohibited retroactive ratemaking.¹ The Commission disagrees.

¹ In Order No. 5484o the Commission stayed implementation of Order No. 5484n pending reconsideration. Order No. 5484o directed that new rates be implemented on November 1, 1991 using an equal percentage increase.

HRC proposes to immediately lift the stay and to implement Order Nos. 5484n, 5484r and 5484s rates for customer classes that "underpaid" under Order No. 5484o. Those classes that "overpaid" under Order No. 5484o would have rates reduced to recover the "overpayment" by November 1, 1992. HRC stated that its "strong preference is for immediate movement to the rates as ordered, coupled with a refund

mechanism." District XI Human Resource Council's Memorandum In Response To Montana Consumer Counsel's Motion For Stay, p. 1, February 15, 1992 (emphasis added).

Implementing new rates with a refund mechanism would force MPC to disgorge revenue collected under lawful rates. (Appendix B, page 2 of 2 to MCC's Motion for Stay (February 11, 1992) shows that the effect of implementing new rates following the winter heating season would be to increase the revenue collected for the year November 1, 1991 through October 31, 1992 relative to either Order No. 5484n or Order No. 5484o rates applied over the same period.) HRC contends that MPC should not object to such a refund mechanism because "MPC has no reason to believe it can benefit from over-collection of revenues during the November 1991 through February 1992 period." HRC's Memorandum in Response to MCC's Motion for Stay, p. 2. Whether MPC objects or not, the Commission reiterates that revenue collected under lawful, final rates belongs to MPC. The Commission finds that the case law in Montana and other jurisdictions is clear on this point. By granting MCC's motion to stay the Commission lawfully ensured (to the extent possible) that MPC would not over earn its revenue requirement for the period November 1, 1991 through October 31, 1992.

HRC argues that its proposal is for an interclass revenue adjustment and does not attempt to disgorge revenue collected by MPC under 5484o rates. The Commission disagrees with this assessment, but even if it is true there is still a question whether such an adjustment constitutes prohibited retroactive ratemaking. No party cited precisely apposite authority on the question, nor could the Commission find such authority.

The Commission finds, however, that the legislative nature of ratemaking precludes retroactive interclass adjustments just as it precludes retroactive adjustments of utility earnings.

Given a winter/summer rate differential the timing of rate implementation will nearly always work to the relative advantage (or disadvantage) of the utility, the ratepayers, or individual ratepayer classes. It would not be practical, however, and may not be possible to schedule rate implementation to eliminate this. The Commission presumes that over a series of rate changes the advantages will roughly balance the disadvantages. The corrective action the Commission took in Order No. 5484s was legal and sufficient; the Commission will not attempt to retroactively adjust rates to virtually eliminate any burden caused by the timing of rate implementation.

DONE AND DATED this 6th day of May, 1992 by a vote of 3-2.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DANNY OBERG, Chairman
(Voting to Dissent)

WALLACE W. "WALLY" MERCER, Vice Chairman

BOB ANDERSON, Commissioner
(Voting to Dissent)

JOHN B. DRISCOLL, Commissioner

TED C. MACY, Commissioner

ATTEST:

Ann Peck
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.

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IN THE MATTER OF The Application)	UTILITY DIVISION
by the MONTANA POWER COMPANY for)	DOCKET NO. 90.6.39
Authority to Increase Rates for)	DISSENTS TO ORDER
Natural Gas and Electric Service.)	NO. 5484w

DISSENT OF COMMISSIONER ANDERSON

Order No. 5484w, dated May 6, 1992, denies the motion of the District XI Human Resource Council (HRC) to reconsider paragraphs 6, 7 and 8 of Order No. 5484s. The Montana Public Service Commission (Commission) reaffirmed its initial decision on both legal and policy grounds.

LEGAL ARGUMENT

In its brief and response, HRC argued that its request, if granted, would not constitute prohibited retroactive ratemaking. Although it could cite no legal authority on point, the Commission concluded that granting HRC's motion would constitute prohibited retroactive ratemaking because: "the legislative nature of ratemaking precludes retroactive interclass adjustments just as it precludes retroactive adjustments of utility earnings." That leap of legal logic goes too far and begs the important policy question.

POLICY QUESTION

The Commission's policy argument in Order No. 5484w was:

7. Given a winter/summer rate differential the timing of rate implementation will nearly always work to the relative advantage (or disadvantage) of the utility, the ratepayers, or individual ratepayer classes. It would not be practical, however, and may not be possible to schedule rate implementation to eliminate this. The Commission presumes that over a series of rate changes the advantages will roughly balance the disadvantages.

By this presumption (not reasoning), the Commission could ignore any inequity in rates created by its own actions. Order No. 5484w fails to address HRC's contention that the rates determined to be just and reasonable and adopted in Order No. 5484n should be implemented and the Order No. 5484s stay creates an enormous inequity.

CONCLUSION

The Commission should take the legal risk that granting HRC's motion would be prohibited retroactive ratemaking and address the inequity to residential ratepayers created by the stay of Order No. 5484s.

BOB ANDERSON

DISSENT OF CHAIRMAN OBERG

It is my opinion that the conclusion of the majority in this case significantly broadens an interpretation of the concept of retroactive ratemaking. I believe it is too broad an interpretation and its use in interclass revenue adjustments thwarts the underlying principle of the prohibition against retroactive ratemaking, that is equity. To not grant the motion of HRC results in serious economic harm to one class of customers when the intent of the stay was equity.

Given this particular set of circumstances and the uniqueness of the stay itself and an evident inequitable collection of revenues, I believe the just and reasonable rates established in Order No. 5484n should take place and I dissent from the conclusions of this Order.

DANNY OBERG

DONE AND DATED this 13th day of May, 1992.